IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Criminal Appeal No. 394 of 2000

Date of Decision: 30th August, 2007.

State of Himachal Pradesh	Appellant
Versus	
Rattan Chand and another	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellant: Mr.A.Burathoki, Addl. Advocate General.

For the respondents: Mr.C.N.Singh, Advocate.

Sanjay Karol, J. (Oral)

The present appeal arises out of the judgment dated 1st August, 1998 passed by Addl. Chief Judicial Magistrate, Nurpur, District Kangra, in Cri. Case No. 39-II/97 acquitting the accused of the charged offence. FIR No. 336/96 under Sections 323, 324, 506 read with Section 34, IPC was registered with Police Station, Nurpur.

The said FIR was got registered by complainant Sandhya Devi stating that on 22.12.1996 at about 5 p.m. at Village Sukhar, the accused in furtherance of common intention gave beating to her with sickle and also hurled abuses and filthy language. Accused Rattan Chand inflicted the sickle blow on her left ear.

The Investigating Officer carried out the investigation and got the complainant medically examined at the Primary Health Centre, Gangath, where she was examined by Dr. Kiran Kumar (PW-1) as is evident from

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

MLC (Ex.PW-1/A). The Investigating Officer ASI Raghubir Chand (PW-7) visited the spot and prepared site plan (Ext.PW-7/B) and recorded the statement of the witnesses and took into possession weapon of offence sickle (Ext.P1) through seizure memo (Ext.PW-7/C) and also recorded statement of Sham Lal (Ext.PW-7/D).

After completion of investigation, challan was presented in the Court. Copies of the challan were supplied to the accused. Charge against the accused persons was framed the accused pleaded not guilty and the matter was put to trial.

During the course of the trial, prosecution examined 7 witnesses, namely, Kiran Kumar (PW-1), Sandhya Devi (PW-2), Sham Lal (PW-3), Swaran Singh (PW-4), Champa Devi (PW-5), Bachan Singh (PW-6) and Raghubir Chand (ASI). Based on the evidence on record, the Court found the accused not guilty of having committed the offence and accordingly acquitted him of the charge for the offences under Sections 323, 324, 506 read with Section 34 IPC.

The present appeal arises out of the said judgment of acquittal.

At the outset, it is important to point out that eye witnesses i.e. Sham Lal (PW-3), Swaran Singh (PW-4) and Champa Devi (PW-5), were declared hostile and even after cross-examination nothing has come out on record which would support the case of the prosecution.

Dr.Kiran Kumar (PW-1) has deposed that the police had brought the complainant to her for medical examination and she found that there was wound on the left ear from which blood was oozing but the injury was simple in nature, which may have caused with some the sharp edged weapon. However, in her cross-examination she has admitted that such injury could be caused due to fall on sharp edged stone.

Sandhya Devi (PW-2) in her examination-in-chief stated that sickle (Ext.P-1) weapon, is not the one with which she is alleged to have received the injury. Her statement itself do not prove commission of offence and guilt of the accused. She has further stated that there is long standing boundary dispute between accused and the complainant. It is important to point out that Sham Lal (PW-3) and Champa Devi (PW-5), who are close relative of PW-2 (brother-in-law and sister-in-law), have turned hostile and have not supported the case of the prosecution at all. Sickle, the weapon with which the injury was inflicted has not been proved on record. Further the Doctor has deposed that such injury could have been caused by falling on the stone, therefore, it cannot be said with certainty that the accused had committed the offence. The case of the prosecution is not proved and is doubtful. In any case, I have perused the statements of the witnesses and am convinced that reasoning adopted by the Court below is totally borne out from the record. There is no perversity in the reasoning, appreciation of the evidence and material on record.

From all the aforesaid reasons, I see no reason to interfere with the judgment of acquittal. The appeal is accordingly dismissed.

30th August, 2007 (Sanjay Karol), J.
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